

MINUTES
WV RACING COMMISSION
Tuesday, September 20, 2016
WV Lottery Conference Room

The WV Racing Commission met on September 20, 2016 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi and Commissioner Bill Phillips. Commissioner Greg McDermott was present via conference call. Counsel was represented by Kelli Talbott.

Approval of the August 17 and September 2 minutes

The Commissioners and legal counsel received the minutes from the August 17th and September 2nd meetings prior to this meeting. Motion was made by Mr. Phillips for approval, noting a minor change to be made to the August 17th minutes, seconded by Mr. McDermott. Motion passed.

Executive Director's Report
Joe Moore

Joe Moore stated the 3 month FOIA report shows 5 requests received. There was one request received in August from Grey2K and it has since been completed.

An update on the out-of-competition testing program: Out-of-competition testing was conducted for the WV Derby. It was also conducted for the Charles Town Oaks ran this past Saturday. 12 horses were tested, 5 of the 6 starters in the Oaks field were in that test. All the tests have come back as acceptable with no violations.

The Legislative agendas from the Commission are probably going to come up fairly soon. We will need to discuss what it is we want to submit to Secretary Kiss for the Department's review prior to sending it up to the Governor's office as the agency's proposals.

Mr. Moore and Ms. Talbott will be meeting with the Stewards and Investigators from both Mountaineer Park and Charles Town next Monday at Mountaineer. A general outline of an agenda is set if the Commissioners would like to add any additional items or comments to that.

Mr. Moore read a resolution honoring the memory of Jamie Divers. Motion was made by Mr. Phillips to adopt the resolution, seconded by Mr. McDermott. Motion passed. (See Attachment for Resolution.)

Mr. Phillips inquired of Mr. Moore if he anticipates the Legislative request for the next meeting or does it need to be discussed today? Mr. Moore replied we probably have time to take that up at that October Commission meeting and if not, we can schedule a special conference call to discuss those issues.

Auditor's Report
Becky Carnefix

Becky Carnefix stated there were no capital improvements submitted for reimbursement during the month.

For the supplemental purse awards, the 2QFY16 claims, covering race dates October 2015 – December 2015, are in the process of being reviewed and are anticipated to be paid early October.

For the thoroughbred development fund, as stated last month, a mailing was sent out the last week of August to all participants at Mountaineer and at Charles Town, for race results January – July 2016, for verification of race information. Any applicable changes as a result of the verification of the race information have been made in the system.

Lastly, the Commissioners have been provided with a copy of her audit schedule for their review.

Accountant's Report Joe Moore

Joe Moore stated for the month of August, live handle is down 4.75% through the first two months of FY17. Total in-state handle is down 5.5% compared to FY16. Part of that is due to Charles Town running 5 fewer races in August 2016 as compared to August 2015. Their August schedule went down to 3 race days a week rather than 4 for this approved calendar year. They are back up to 4 race days a week now.

The Commissioners were provided with a Financial Summary report for July 2016. Next month he will be providing the Commissioners the quarterly account for FY17 through the first quarter. He plans to have a race day analysis prepared as well that will include the daily average wager of live racing.

Suttle & Stalnaker were in the week of August 22nd conducting fieldwork for the annual audit. There is one outstanding item that is currently being worked on. There is also an item effecting all State agencies related to GASB 68 and the calculation of pension liabilities. The last he spoke with the auditors, they were still unsure when they would receive the information needed to make those calculations on behalf of the Racing Commission.

An outlook going forward, by the end of calendar year 2016 he hopes to have many of the accounting functions transitioned to the Director of Audit, at which time the reporting in the Commission meetings will have a comprehensive Accounting and Auditing report presented by the Director of Audit.

Legal Update

Kelli Talbott stated yesterday the pari-mutuel wagering rule amendments and the thoroughbred racing rule amendments were before the Legislative Rule Making Review Committee during interims. Both rules passed out of Committee with some minor modifications, specifically all rules now have to have a sunset date. If it's an amendment to an existing rule, which these are, we select a sunset date, it's not mandated by Code. The Legislative Rule Making Review Committee has come up with specific language that they want inserted in all rules that specifies when the rule will expire. The way we did it was 5 years from the effective date. She imagines with the thoroughbred rule they will probably get into that before 5 years expires but thought that was a safe timeframe to put in the rule. That was the only modification to the thoroughbred rule.

The pari-mutuel wagering rule was the same thing. The sunset language had to be added. There were some minor wording changes to the pick in jackpot wager rule. Counsel for the Legislative Rule Making Review Committee asked us to make the language clearer but it didn't change the substance of the rule. Those rules are now filed with the Secretary of State as of yesterday afternoon, with Legislative Rule Making Committee's approved changes, and they are ready to go in front of the Legislature when they convene in February.

For the Procedural Rule that the Commission voted to put out for 30 day public comment period on raising the filing fee to \$500 for an appeal, she submitted all the necessary

documentation to Secretary Kiss' office so they can either approve or not approve it to go out for 30 day public comment and she is still waiting for them to get back to her on this.

She has been continuing to work on the RCI Subcommittee that was appointed to come up with a new model rule on out-of-competition testing. The committee has completed a draft model rule on the procedures and process for testing and selection of horses. At this point they are working on another portion of the rule that relates to the substances that would be tested for and prohibited. She anticipates the committee soon wrapping up its work so it can be reported to the RCI Model Rule Committee.

She will be going with Mr. Moore to Mountaineer next week for the Stewards training and will also be attending a Stewards hearing regarding the claiming of a horse and the legal issues involved in that case.

Mr. Phillips inquired of Mr. Moore if the Commissioners were sent the agenda for the Stewards meeting on the 26th or is he going to send them the agenda to kick off their minds about things that should be discussed? Mr. Moore replied he will send them an agenda this afternoon after he and Ms. Talbott finalize their ideas about the issues to be discussed and the topics the Investigators have suggested as well.

Charles Town Capital Improvement Request – Amplifiers to send Live Race Signal to test barn

Joe Moore stated this request was received in early September and was requested it could not wait for the Commission meeting. The amplifier that carries the tv signal out to the Charles Town test barn was damaged in a lightning storm causing the signal to be lost and the Charles Town test barn not being able to view the live races at Charles Town on their test barn television, therefore, there was a lot of testing and medication information that they typically take down at that point that they were unable to get that way. They also did not know the winning horse that was going to be coming in for testing, any specials and what places they finished to put down on their cards that they prepare for the test results to be sent out for testing. The employees, both of the Racing Commission and at Charles Town, and himself have discussed other avenues of achieving signal out there other than these amplifiers that often get damaged in storms and in signals lost. We are looking at getting a better internet connection out there to be able to view that from a computer sent up to the television and different avenues. In the meantime, he has asked Mr. Zimny to go out and purchase a couple of amplifiers, one to go ahead and have installed to get the signal back and functioning, and two others to have in backup in the event this takes place again before we get a long time solution established. These amplifiers have already been purchased as an emergency purchase to facilitate our functions as a Racing Commission in the test barn and are now coming to the Commission for their final approval.

Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

Charles Town Capital Improvement Request – Barn LED Lighting

Charles Town Capital Improvement Request – 10 Grandstand Area Rooftop AC units

Becky Carnefix stated the first request is from Charles Town for new LED light fixtures for all exterior lighting for the barn area, in the amount of \$59,229.39. The second request is also from Charles Town and is for 10 rooftop AC units for the clubhouse area that overlooks the track. The current units are beyond their useful life and are becoming very costly to repair. The

amount of this request is \$189,785. She has reviewed both of the requests and the documentation submitted and recommends both for approval.

Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

Charles Town Export Request - Amalgamated Racing Limited dba Turf TV

Charles Town Export Request – Oxford Downs

Joe Moore stated the first request is for Charles Town to send their signal to Turf TV. The second request is for Charles Town to send their request to Oxford Downs. Mr. Zimny's request has been submitted, as well as Mr. Funkhouser's approval from the HBPA, for the Commission's review and consideration.

Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

Mardi Gras Request for approval of 2017 kennel contracts

Joe Moore stated he has included in the Commissioners information one contract for their review. There are currently 14 signed contracts for Mardi Gras and all contracts are exactly the same. He has copies, with signatures, of all 14 in his office and these are the 14 contracts for calendar year 2017. The 14 kennel names and owners for 2017 are the following:

McMillon Kennel – Patrick McMillon
Imark Kennel – Terry Haber
Cavender Kennel – Rondis Cavender
DKC Kennel – Kim & Danny Clayton
Double G Racing – Greg Geter
Tomblin Kennel – Earl Ray Tomblin
Lester Raines Kennel – Lester Raines
Traditional Kennel – Tim Donahue
Tri-Point Racing – Richard Arno
Xtreme Enterprises – Mike Grose
Maupin Kennel – Harvey Maupin
Blue & Gold Kennel – Roger White
Abrahamson Kennel – Neil Abrahamson
Steve M. Sarras Kennel – Steve Sarras

Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

Approval to hire Greyhound Breeding Development Fund clerk

Joe Moore stated in the last Commission meeting he asked the Commission for approval to start a process of hiring a part-time employee to serve the functions of the Greyhound Breeding Development Fund clerk for the Racing Commission. That has since been put out for submission, have received resumes, conducted interviews and received Secretary Kiss' approval on a new hire. He recommends the Commission move forward in hiring Janet

Williams as a part-time employee of the Racing Commission as the Greyhound Breeding Development Fund clerk.

Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

Separation of Employment – Test Barn Employee at Charles Town

Joe Moore stated the employee referenced in this agenda item is Deborah Minnis. Ms. Minnis has been a Racing Commission employee in the Charles Town test barn. In February 2015, Ms. Minnis worked her last day for the Racing Commission. She has been off since then on a Medical Leave of Absence due to an illness. She has exhausted all of her own personal annual and sick leave, as well as annual leave that was donated to her from other employees of the State of WV. It has now been over 18 months since that position has been vacant and the Racing Commission has been using fill-in sub contract employees to fill that spot in the test barn. During this time, we have allowed Ms. Minnis' brother to continue paying the employee portion of her medical insurance while the Racing Commission carried the employer portion of her medical insurance. Today he is going to ask the Racing Commission to approve the termination of that position at Charles Town and authorize the Executive Director to move forward in interviewing and hiring a part-time employee to serve that role. Ms. Minnis was a full-time employee and he has reviewed all of the job requirements and other employees in the test barn at Charles Town and determined that it's probably only necessary to have a part-time position there, strictly related to live racing. The employee would only work during live racing hours, on live racing days, and be paid on a part-time basis and would not qualify for State benefits.

Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

NTRA Safety & Integrity Accreditation

Joe Moore stated this is a follow-up from last month's meeting and the presentation from the NTRA. The Commissioners have had that presentation to consider and review over the past month. The item is on the agenda today for and further discussion the Commission wishes to have.

Mr. Phillips stated he appreciates the attention and consideration that both Chairman Rossi and Mr. McDermott have given to this issue and others that are in our industry that have taken the time to take a look at it during this past month. Having been on the Commission about 3 years, he certainly can see value to undertaking a process that looks at all elements of our sport. Having thought about it since the presentation last month and previously, he thinks if we undertake this process, if nothing else comes from it just using some outside experts to give us a fresh, in-depth look at the issues that possibly need to be addressed, rules that maybe aren't being followed, how our employees are approaching their jobs and how are we working with our industry partners to assure safety and integrity of thoroughbred racing, makes a lot of sense to him.

Mr. Phillips made the motion that the WV Racing Commission require its thoroughbred tracks apply for National Thoroughbred Racing Association Safety & Integrity Alliance Accreditation. Further, that the Commission authorize the use of Capital Improvement funds to engage the NTRA organization to work with the tracks to accomplish the above objective. Should any additional funds be required to meet the Alliance Accreditation requirements, the request would be considered on an individual basis. And further, that the track should begin the

application process within 15 days and complete same no later than 45 days from the passage of this motion, and further that the Commission anticipates industry partners at each track and the Commission staff to be responsive to track requests for information and assistance throughout the process. Motion was seconded by Mr. McDermott.

Nelson Robinson asked if he understood it correctly to say the monies would come from Capital Improvement funds? Mr. Phillips replied that is the motion, yes. Mr. Robinson stated what if the track didn't request it? Mr. Phillips replied his thought is if the track didn't request it but in order to accomplish accreditation x has to occur, then this motion would authorize the use of the Capital Improvement funds to accomplish that objective. Mr. Phillips added as we monitor this process and x needs to happen at a track in order to get accreditation, this motion would give the authority to spend Capital Improvement funds to get x accomplished. Erich Zimny asked if this includes the application fee itself? Mr. Phillips replied yes it does and if he remembers correctly from the presentation last month, the fee was \$15,000 for Charles Town and \$10,000 for Mountaineer. Mr. McDermott added that was his recollection as well.

Rosemary Williams stated it's also her understanding that once you apply and you're accredited, to get re-accredited there's a fee involved with that every 2 years. Mr. Phillips stated that's his understanding and it's very close to the same dollar amount as the initial accreditation. Ms. Williams asked if that would come from Capital Improvements also? Mr. Phillips replied that's not in his motion but he'd be willing to amend his motion to accomplish that objective. Basically he would add the sentence to the effect that the second year accreditation be covered through Capital Improvement funds, and this is the amendment to his motion. Mr. McDermott replied this amendment will be fine.

Ms. Williams commented it was her understanding that Ms. Talbott was going to look at that to make sure Capital Improvement monies could be used for that. Was that determined to be so? Ms. Talbott replied she believes that it can. Mr. Zimny asked what would happen if that fund were to go away at some point? Mr. Phillips replied hopefully we would accomplish the accreditation and take care of the items that have to be done in order to get accredited and those would be maintained and it probably wouldn't even come up as a big matter after we get through the first accreditation. He then asked Mr. Moore for his thoughts on that. Mr. Moore stated if he understood Mr. Zimny's question correctly he's probably referring to the renewal on an every 2 year basis of that \$15,000, not the initial expense or the improvements that may or may not need to be made at the tracks to achieve accreditation. If sometime in the future the Legislature did away with that Racetrack Video Lottery fund which funds Capital Improvements for the Racing Commission, how would that then be addressed. Ms. Talbott replied wouldn't you just cross that bridge when you come to it? Mr. McDermott replied that's his thought. Chairman Rossi added we'll try and come up with that when the time comes.

Ms. Williams stated she knows we're all interested in safety but her concern would be if they go through the process and in the process they think the track is delinquent on something, for example they need to get a new rail, would that be covered under the Capital Improvements money then? Mr. Phillips replied based on his motion, yes.

Motion was passed.

Public Comments

Nelson Robinson stated he'd like to congratulate the 3 members of the Commission the Governor reappointed, he believes being confirmed today. Mr. Robinson then stated he thinks it's been very well publicly pointed out about Sam Huff. Sam is having some serious health problems and if there was something the Commission could do, a proclamation or whatever, he thinks it would be appropriate. Sam has done so much for the racing industry for at least 30 years or so. Chairman Rossi stated that is very appropriate and they will take that into

consideration. Mr. McDermott added let's have something ready for our next meeting and that's a great thought.

Adjournment

Motion was made by Mr. Phillips for adjournment, seconded by Mr. McDermott. Meeting adjourned.

Resolution by the

West Virginia Racing Commission

Honoring the Memory of

Jamie Hudson Divers

WHEREAS, on August 21, 2016 the West Virginia Racing Commission lost a dear friend and valued employee with the passing of Jamie Hudson Divers, and

WHEREAS, the West Virginia Racing Commission wishes to honor Jamie's life and the dedication she showed as a Racing Commission employee, and

WHEREAS, Jamie served the State of West Virginia as the Greyhound Breeding Development Fund Clerk for 5 years and had previously served in the Legislative Auditor's Office & as a Budget Analyst for the Senate Finance Committee. Jamie earned a reputation of a hard-working employee essential to the regulatory duties governing greyhound racing in West Virginia, and;

THEREFOR, be it resolved that the West Virginia Racing Commission celebrates the memory of Jamie Hudson Divers and expresses its heartfelt condolences to the entire Hudson & Divers family.

Jack Rossi, Chairman

Joseph Moore, Executive Director